

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON LEE BACHMEIER,)	No. C 07-2924 JF (PR)
)	
Petitioner,)	CORRECTED ORDER
)	GRANTING PETITIONER'S
vs.)	MOTION TO PROCEED IN
)	FORMA PAUPERIS; ORDER TO
)	SHOW CAUSE
D. ADAMS, Warden,)	
)	
Respondent.)	
_____)	(Docket No. 4)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion to proceed in forma pauperis. The Court will GRANT Petitioner's motion to proceed in forma pauperis (docket no. 4). The Court orders Respondent to show cause why the petition should not be granted.

STATEMENT

Petitioner entered a nolo contendere plea to receiving stolen property, evading arrest, possessing drugs, and being a felon in possession of a firearm in the Sonora Superior Court. On August 21, 2003, the superior court sentenced Petitioner to a term of seven years and four months in state prison.

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Petitioner filed three state habeas petitions in the state superior court, state appellate court, and state supreme court, which were all denied as of July 18, 2007. The instant federal habeas petition was filed on June 5, 2007.

DISCUSSION

A. Standard of Review

A district court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

Petitioner alleges the following claims for federal habeas relief: (1) the trial court erred in imposing a fine without first addressing Petitioner’s ability to pay; and (2) ineffective assistance of counsel in counsel’s failure to request an express determination of Petitioner’s ability to pay the fine. Liberally construed, Petitioner’s claims are sufficient to require a response. The Court orders Respondent to show cause why the petition should not be granted.

CONCLUSION

1. Petitioner’s motion to proceed in forma pauperis (docket no. 4) is GRANTED.

2. The Clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

3. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should

1 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of
2 all portions of the state trial record that have been transcribed previously and that are
3 relevant to a determination of the issues presented by the petition.

4 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
5 with the Court and serving a copy on Respondent within **thirty days** of his receipt of the
6 answer.

7 4. Respondent may file a motion to dismiss on procedural grounds in lieu of
8 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
9 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
10 with the Court and serve on Respondent an opposition or statement of non-opposition
11 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and
12 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

13 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
14 the Court and all parties informed of any change of address by filing a separate paper
15 captioned "Notice of Change of Address." Petitioner must comply with the Court's
16 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
17 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

18 IT IS SO ORDERED.

19 Dated: 11/19/07


JEREMY FOGEL
United States District Judge

1 A copy of this order was mailed to the following:

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3 Jason Lee Bachmeier
4 K-52314
5 CSP - Corcoran
6 P.O. Box 3481
7 Corcoran, CA 93212
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